

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**Case No. 3:06-cr-121  
also Civil Case No. 3:11-cv-315**

**ANTONIO MYLES,**

**District Judge Thomas M. Rose**

**Defendant.**

**Magistrate Judge Michael R. Merz**

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**ENTRY AND ORDER OVERRULING MYLES' OBJECTIONS (Doc. #37)  
TO THE MAGISTRATE JUDGE'S REPORT AND  
RECOMMENDATIONS; ADOPTING THE MAGISTRATE'S REPORT  
AND RECOMMENDATIONS (Doc. #36) IN ITS ENTIRETY; DISMISSING  
MYLES' § 2255 MOTION WITH PREJUDICE; DENYING MYLES  
LEAVE TO APPEAL *IN FORMA PAUPERIS* AND ANY REQUESTED  
CERTIFICATE OF APPEALABILITY AND TERMINATING THE CIVIL  
CASE**

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This matter is now before the Court pursuant to an Objections (doc. #37 in criminal case) filed by Antonio Myles ("Myles") to the Report and Recommendations issued on September 6, 2011, by Magistrate Judge Michael R. Merz.

The District Judge has reviewed the findings of Magistrate Judge Merz. The District Judge has also made a de novo review of the record in this case pursuant to 28 U.S.C. § 636(b) and Fed.R.Civ.P. 72(b). Upon consideration of the foregoing, the Court finds that the Objection to the Report and Recommendations (doc. #37 in the criminal case) is not well-taken and it is hereby OVERRULED.

Myles filed a Motion To Vacate under 28 U.S.C. § 2255 on September 2, 2011, bearing a purported signature date of September 15, 2007. He now claims that the Motion To Vacate was

delivered to the prison authorities on September 15, 2007. In a letter dated August 28, 2011, he asked the Clerk to file the § 2255 Motion To Vacate as of September 15, 2007, the date listed on the Motion. Finally, the docket confirms that this Court never received a § 2255 Motion from Myles before September 2, 2011.

The law does not require a court to accept at face value a prisoner's claim about when he mailed a document and Myles' claim in this case is completely incredible. How did Myles learn that the original motion was not received? If the mail was returned to him, he would have known almost at once. Finally, why did he suffer four additional years of what he now claims is unconstitutional imprisonment before refiling?

The Magistrate Judge's Report and Recommendations is ADOPTED in its entirety. Myles' Motion To Vacate pursuant to 28 U.S.C. §2255 is dismissed with prejudice. Also, because reasonable jurists would not disagree with this conclusion, Myles is denied leave to appeal *in forma pauperis* and any requested certificate of appealability. Finally, the captioned civil cause is hereby ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

**DONE and ORDERED** in Dayton, Ohio, this Eleventh day of October, 2011.

**s/Thomas M. Rose**

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THOMAS M. ROSE  
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Antonio Myles at his last address of record  
Counsel of Record